



BOARD OF INQUIRY (*Human Rights Code*)

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, as amended;

AND IN THE MATTER OF the complaint by Adam Tilberg, dated March 25, 1993, alleging discrimination in employment on the basis of handicap.

B E T W E E N :

Ontario Human Rights Commission

- and -

Adam Tilberg

Complainant

- and -

McKenzie Forest Products Inc.

Respondent

INTERIM DECISION

Adjudicator : Katherine Laird

Date : June 01, 2000

Board File No: BI - 0111-97

Decision No : 00-010-I

Board of Inquiry (*Human Rights Code*)
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APPEARANCES

Ontario Human Rights Commission)
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)

Adam Tilberg, Complainant)
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McKenzie Forest Products Inc.)
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)

Nigel Campbell, Counsel

The hearing into the merits of the human rights complaint of Adam Tilberg ("Tilberg") has been adjourned before the Board of Inquiry ("Board"), on the consent of all the parties, since October 1998. That adjournment was continued while the respondent, MacKenzie Forest Products ("MacKenzie"), pursued an application for judicial review before the Divisional Court, and, on appeal, before the Ontario Court of Appeal. A majority panel of the Divisional Court reversed my decision in which I held that the Board retained jurisdiction to hear and decide the Tilberg complaint notwithstanding the withdrawal of the Ontario Human Rights Commission ("Commission") from active carriage of the complaint at the hearing before me. The Court of Appeal has now unanimously reversed the decision of the Divisional Court.

In accordance with notice delivered to all the parties and counsel, this hearing re-convened by telephone conference call on May 25, 2000. In advance of the conference call, counsel for the Commission advised the Registrar of the Board that the Commission would not be participating in the re-convened hearing on May 25, 2000. Unfortunately, the conference call operator was unable to reach Mr. Rayner, counsel for Tilberg, as the conference call commenced. The operator continued to try to reach Mr. Rayner. Counsel for the respondent, Mr. Campbell, participated in the call.

During the brief hearing by conference call on May 25, 2000, Mr. Campbell confirmed that MacKenzie would be seeking leave to appeal to the Supreme Court of Canada. He advised me that he did not expect the leave application to be decided until the late fall of this year.

I raised two matters in particular with Mr. Campbell. The first was whether or not his client had complied with the disclosure order in my decision released on October 2, 1998. I expressed concern that, should the Supreme Court not grant leave, the hearing in this matter would be further delayed by the failure of the respondent to comply with that order. Secondly, I raised the possibility that the Board would tentatively schedule one or more hearing dates, after the expected date of the Court's decision on the leave application, in order to ensure that the hearing could proceed in a timely fashion if leave to appeal were not granted.

Mr. Campbell addressed both issues in brief submissions. When it became apparent that Mr. Rayner was not likely to join the conference call, I asked him to make his submissions in writing so that the other parties would have the opportunity to respond. He stated that he would not do so, and that his position was that the Board had no continuing jurisdiction pending the leave application to the Court. He did not specifically ask that the Board grant a stay or an adjournment of this hearing until such time as the leave application was decided by the Court. He stated that he would seek a stay before the Court, if necessary.

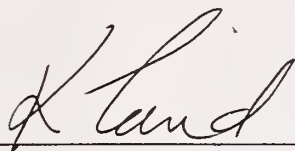
It is my responsibility, as the Vice-Chair assigned to hear and decide this complaint, to ensure that the process before me proceeds in an expeditious manner, consistent with fairness to all the parties. Pursuant to s. 25(1) of the *Statutory Powers Procedure Act*, S.O. 1999, c.12, s.16, as amended, MacKenzie's application for judicial review did not operate to stay the hearing before me. Nonetheless, on the consent of all the parties, the hearing was adjourned to allow the respondent to bring an important jurisdictional question before the Divisional Court. The Court of Appeal has now, in its decision released April 18, 2000, remitted the Tilberg complaint to the Board for further hearing. The Board has not received a request from MacKenzie for a continued adjournment or a stay, nor has it heard from the complainant on compliance with the disclosure order or on the tentative scheduling of one or more hearing days.

I will allow the complainant until June 14, 2000 to address the issues raised in the May 25, 2000 conference call, as outlined above. In particular, I am seeking Tilberg's position on whether or not, in the absence of a stay from the Supreme Court, I should adjourn or stay this hearing until such time as the Court releases its decision on the leave application. If not, is the complainant seeking a resumption of the hearing on the merits or the scheduling of tentative hearing dates after the expected date of the Court's decision? Secondly, I am asking counsel for the complainant to clarify what compliance, if any, has been made in respect of my earlier disclosure order, and what disclosure is currently being sought. I also would like submissions on the question of whether or not MacKenzie should be required to make such disclosure pending the Court's consideration of the leave application.

If the Commission has a position on any of these issues, those submissions should be delivered to the Board by June 14, 2000.

MacKenzie may file reply submissions by June 22, 2000.

Dated at Toronto, this 1st day of June, 2000.

A handwritten signature in cursive script, appearing to read "K Laird", is written above a horizontal line.

Katherine Laird

Vice-Chair

